

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
5/28/2024 10:15 AM  
BY ERIN L. LENNON  
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No. 102651-0

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON  
(COURT OF APPEALS NO. 57948-1-II)

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STATE OF WASHINGTON,  
Plaintiff/Appellant

v.

DWAYNE EARL BARTHOLOMEW,  
Defendant/Respondent.

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STATEMENT OF ADDITIONAL AUTHORITY

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MacDONALD HOAGUE & BAYLESS

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ATTORNEYS FOR PETITIONER

Petitioner submits the following additional authority in support of his Petition for Review: *State v. Carter*, 2024 Wash. LEXIS 252 (WSCt. No. 101777-4, 5/24/24).

*Carter* rejects the State's argument that trial courts have no power to impose sentences of less than life without parole in aggravated murder cases involving youthful offenders, absent legislative action, 2024 Wash. LEXIS 252 at \*20. The State also made that argument in this case and it was a basis for the Court of Appeals' decision below. See Pet. Rev. 10, 17-18.

*Carter's* central holding is that trial courts have discretion to impose determinate sentences in aggravated murder cases. *Carter*, 2024 Wash. LEXIS 252 at \*32. It so held because the parole process defined by RCW 9.95.030 is inapplicable to such cases. *Id.* That means the minimum term Order under review in this Petition was meaningless and inadvertently left Petitioner with a new sentence of life without parole. Pet. Rev. 13-17.

When the trial court entered that Order, neither it nor the parties knew it could impose a determinate sentence instead. The parties had litigated the issue up to a Petition to Recall the Certificate of Finality and Request for Instructions Regarding Remand in *In re Bartholomew*, WSCt. No. 96773-3, which this Court denied on May 4, 2022. Nowhere was it suggested, and no authority was found, that a determinate sentence was an alternative the trial court could consider.

In analogous circumstances involving mutual mistakes regarding sentencing, this Court has ordered relief. *See, e.g. State v. Barber*, 170 Wn.2d 854, 873, 248 P.3d 494 (2011) (withdrawal of guilty plea for mutual mistake about sentence); *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001) (same). Here, if relief is not granted in some other manner,<sup>1</sup> the Court should grant the petition and remand for resentencing in which the trial

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<sup>1</sup> Petitioner is simultaneously seeking similar relief on this basis in his pending Petition for Review, *State v. Bartholomew*, No. 102651-0, and Motion for Discretionary Review, *In re Bartholomew*, No. 103041-0. S

court can consider the determinate sentence that *Carter* held it had the power to impose.

RESPECTFULLY SUBMITTED May 28, 2024.

*This document was word processed and consists of 349 words. RAP 18.17(c).*

*Tim Ford*  
Timothy K. Ford, WSBA #5986  
Attorney for Petitioner

## **CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on the 28th day of May 2024, I electronically filed the foregoing with the Clerk of Court using the Washington State Appellate Courts' Portal.

I certify that all participants in the case are registered Washington State Appellate Courts' Portal users, and that service will be accomplished by the Washington State Appellate Courts Portal system.

/s/ *Chris Bascom*  
Legal Assistant

**MACDONALD HOAGUE & BAYLESS**

**May 28, 2024 - 10:15 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,651-0  
**Appellate Court Case Title:** State of Washington v. Dwayne Earl Bartholomew  
**Superior Court Case Number:** 81-1-00579-1

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**Comments:**

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